

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

United States of America	)	Cr. No. 7:98-076-HMH
	)	
vs.	)	
	)	<b>OPINION &amp; ORDER</b>
Daryl Andre Fuller,	)	
	)	
Defendant.	)	

This matter is before the court for consideration of whether the Defendant is entitled to a reduction in his sentence pursuant to Amendment 706 to the United States Sentencing Guidelines (“U.S.S.G.”), effective November 1, 2007, and deemed retroactive March 3, 2008. U.S.S.G. App. C. Amend. 706 (Nov. 1, 2007).

The court has reviewed the record in this case including the Defendant’s Presentence Investigation Report. Based on this review, the court has determined that the Defendant is not entitled to a reduction in his sentence pursuant to 18 U.S.C. § 3582(a) because the Defendant’s offense level was determined based on his criminal record and not the amount of crack cocaine involved in the offense. The court granted the government’s motion for upward departure because the Defendant’s criminal history category did not reflect his criminal history points (66 points). The court utilized a total offense level of 30 when sentencing the Defendant. Therefore, the Defendant’s pro se motion for a reduction in his sentence based upon Amendment 706 is denied. Further, the Defendant’s objections to the Sentence Reduction Report are without merit.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
June 3, 2008

**NOTICE OF RIGHT TO APPEAL**

Movant is hereby notified that he has the right to appeal this order within ten (10) days from the date hereof, pursuant to Rule 4 of the Federal Rules of Appellate Procedure.